

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Declaratory Ruling on Enhanced)	WC Docket No. 03-133
Prepaid Calling Card Services)	

OPPOSITION OF SBC COMMUNICATIONS INC.

SBC Communications Inc. (SBC) hereby submits its opposition to AT&T's petition for declaratory ruling that its purportedly "enhanced" prepaid calling card services are interstate in nature and thus subject to interstate, rather than intrastate access charges.¹ The Commission should reject AT&T's frivolous petition and send a clear message that attempts to circumvent its access regime by raising baseless legal arguments will not be tolerated.

AT&T's latest attempt to avoid lawfully assessed access charges is premised on the argument that the presence of an advertising message is sufficient to transform a run-of-the-mill intrastate long distance call into an information service consisting of two distinct interstate components. In order to accept AT&T's argument, the Commission would have to conclude that end users are purchasing prepaid calling cards for the purpose of receiving the advertisement, rather than making long distance calls. That is nonsense. The sole purpose of the advertisement is to reduce the cost of the prepaid long distance service that the end user has purchased. As discussed below, AT&T's various arguments in its Petition are all designed to distract attention away from the essential functionality provided by its prepaid calling cards — the ability of the

¹ AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services filed on May 15, 2003 (Petition).

cardholder to make long distance voice calls to a called party in another state or within the same state.

Grant of AT&T's Petition would have far-reaching negative consequences for end users served by the public switched telephone network (PSTN). It would allow any prepaid calling card provider — indeed, any 1+ long distance provider — to avoid intrastate access charges simply by sending an advertisement to the calling party. But there is much more to AT&T's Petition. Once AT&T has obtained a declaratory ruling that its prepaid calling card service is jurisdictionally interstate, it undoubtedly will claim that the “enhanced” service is exempt from interstate switched access charges under the ESP exemption. Thus, AT&T will not be paying *any* switched access charges, let alone the jurisdictionally appropriate access charges.

If the Commission has any questions about AT&T's intentions, it need only review AT&T's October 2002 petition for a broad declaratory ruling that phone-to-phone services it characterized as “IP telephony” are exempt from access charges.² In its October 2002 Petition, AT&T took the position that any interstate long distance traffic that was provided in part over the same facilities as its Internet backbone traffic is exempt from switched access charges, even when such traffic originates and terminates on the PSTN. AT&T noted in the October 2002 Petition that it was also providing “enhanced voice prepaid card services” over the same Internet backbone facilities as its phone-to-phone services.³ It did not explain the nature of this

² AT&T Corp. Petition for Declaratory Ruling, WC Docket No. 02-361, filed on October 18, 2002 (October 2002 Petition).

³ *Id.* at 24.

supposedly enhanced calling card service, and at least two commenters questioned why any of AT&T's calling card services would properly be considered enhanced.⁴

When AT&T's petitions are read together, it is clear that AT&T is attempting to bootstrap its argument that its phone-to-phone "IP telephony" services are exempt from interstate switched access charges by relying on the presence of "enhanced" calling card traffic on the same backbone facilities. That explains why AT&T is now attempting to piece together an argument that its prepaid calling card service is an information service. Notwithstanding AT&T's creative arguments, neither AT&T's phone-to-phone telephony traffic nor its calling card service is entitled to an exemption from switched access charges. It also is clear that AT&T is seeking to avoid payment of switched access charges for any traffic that at any point is carried on its Internet backbone facilities. The Commission should promptly reject both of AT&T's petitions.

I. AT&T's Prepaid Calling Card Service Constitutes a Single Telecommunications Service from the Calling Party to the Called Party

AT&T argues that its prepaid calling card service is "enhanced" because calls made via this service are routed to its 800 platform where an advertisement or other information unrelated to the call processing is communicated to the caller. As a result, because the 800 platform provides the caller an advertising message, AT&T argues that its prepaid calling service consists of two separate calls for jurisdictional purposes, the first being the call to the 800 platform where the advertisement is communicated and the second being the call from the platform to the third party.⁵

⁴ See, e.g., Qwest Comments at 12 n.29, WC Docket No. 02-326, filed on December 18, 2002; The New York State Department of Public Service Comments at 4 n.9, WC Docket No. 02-326, Filed December 18, 2002.

⁵ Petition at 9-10.

AT&T argues that the advertising message it sends to a calling party using its prepaid calling service establishes a call endpoint at the 800 service platform, thereby transforming AT&T's prepaid calling service into two separate calls for jurisdictional purposes.⁶ But there is no question that the sole service end users are buying from AT&T is the ability to make interstate and intrastate long distance calls. No one is buying the cards to listen to advertising or to retrieve stored information. Indeed, AT&T admits that the purpose of the advertising is to reduce the price of the long distance calling service purchased by end users.⁷ These critical facts clearly distinguish the Commission's decision in *Northwestern Bell Telephone Company Petition for Declaratory Ruling*⁸ and similar cases involving end users that purchase an information service for the purpose of interacting with stored content.

Further, AT&T has no argument that its prepaid calling service constitutes anything other than a single telecommunications service from the calling party to the called party. What AT&T dismisses as a one-call "theory" is the Commission's established framework for determining the jurisdiction of traffic.⁹ It is well-settled under FCC precedent that the "jurisdictional nature of a call depends solely upon where the call originates and where it terminates, without regard to where or how the call is carried in between the origination and termination points."¹⁰ The fact

⁶ Petition at 9-10.

⁷ *Id.* at 5.

⁸ *Northwestern Bell Telephone Company Petition for Declaratory Ruling*, 2 FCC Rcd 5986, ¶ 20 (1987).

⁹ Petition at 7.

¹⁰ *Federal-State Board on Universal Service*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252, 21255 (1998); see *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Inter-Carrier Compensation for ISP-Bound Traffic*, Declaratory Ruling and Notice of Proposed Rulemaking, 14 FCC Rcd 3689, at 3695 (*ISP Declaratory Ruling*) ("As many incumbent LECs properly note, the Commission traditionally has determined the jurisdictional nature of communications by the end points of the communication and consistently has

that AT&T uses interstate telecommunications to provision the calling card service is completely irrelevant for purposes of determining whether the call is interstate or intrastate. It is the beginning and endpoints of the call that are determinative, not the routing of a call.

It is equally clear that a separate call is not “emanating” from the 800 platform. SBC, in fact, has previously argued that 800 credit card calls should be treated as two separate calls for jurisdictional purposes, an argument that was soundly rejected by the Commission. In that proceeding, the Commission determined that “switching at the credit card switch is [merely] an intermediate step in a single end-to-end communication.”¹¹ The fact is, calls utilizing an 800 calling card service, like any other telephone call, constitute a continuous path of communication that “extends from the inception of [the] call to its completion, regardless of any intermediate facilities.”¹² Calls made via AT&T’s prepaid calling card service necessarily must be routed through the 800 platform to reach the called party, and the addition of an advertisement is irrelevant to the purpose and nature of the call. There simply are not two distinct calls as AT&T claims.

Likewise, AT&T is wrong that prepaid card calls are in any way analogous to three-way calls. In the three-way calling context, the caller originates a single call over a single circuit that terminates with one end user, and then makes a second call over a second circuit to a second end user prior to joining the two calls together. Thus, there are two calls over two circuits that

rejected attempts to divide communications at any intermediate points of switching or exchanges between carriers.”).

¹¹ Southwestern Bell Telephone Company, Transmittal Nos. 1537 and 1560, Revisions to Tariff F.C.C. No. 68, Order Designating Issues for Investigation, 3 FCC Rcd 2339, 2341 (1998).

¹² *ISP Declaratory Ruling*, 14 FCC Rcd at 3696.

terminate with two separate end users. Here, by contrast, the prepaid card caller makes only one call over one circuit that terminates with only one end user.

II. Grant of AT&T's Petition Would Have Far-Reaching Negative Consequences for Customers Served by the PSTN

Grant of AT&T's Petition would have far-reaching consequences for customers served by the PSTN. It would allow any long distance carrier to game the system and avoid interstate and intrastate access charges merely by playing some type of announcement or advertisement for the calling party. There would be nothing to stop AT&T or another carrier from implementing such an advertisement for *all* of its calling card and 1+ services as a way of circumventing access charges. The inevitable result would be rapid erosion of switched access charges, as long distance carriers added unwanted advertisements as a way of reducing their costs and undercutting the competition in the market.

In addition to facilitating the circumvention of interstate and intrastate access charges, grant of AT&T's petition would directly reduce federal universal service contributions. Sprint recently documented that this appears to be occurring already, as reportable revenues from calling cards declined more than 90 percent between 1999 and 2002.¹³ SBC shares Sprint's concern about this issue and agrees that further investigation of this issue is warranted. A carrier should not be allowed to eliminate or reduce its universal service contributions because it has chosen to include an advertisement message with its prepaid calling card service.

The Commission must protect the integrity of the access charge and universal service regime from those who seek to avoid their obligations under the current rules. As AT&T itself acknowledges, many states have not tackled the difficult job of implementing universal service

¹³ Letter from Richard Juhnke, Vice President Federal Regulatory Affairs, Sprint Corporation, to Christy Doleshal, Universal Service Administrative Company dated May 27, 2003.

and related reforms.¹⁴ Therefore, access charges, particularly intrastate switched access charges, continue to provide an important source of implicit subsidies for universal service. AT&T and other carriers are not entitled to game the system because they are not happy about the slow progress of reform and the implicit subsidies that remain in intrastate switched access charges.

The fact that calling cards may provide a public benefit has no bearing on the issue of the type of access charges that apply. If AT&T and others could avoid their obligation to pay access charges by simply playing an advertisement, they would have an unfair competitive advantage over the carriers that provide identical long distance services without including an advertisement. It is unclear how the continued viability of AT&T's "innovative" prepaid calling services is threatened if it is subject to the same obligation as other long distance carriers to pay jurisdictionally appropriate switched access charges.¹⁵ And, contrary to AT&T's self-serving threat, the applicability of access charges certainly has no bearing on whether AT&T continues to offer advertising-supported prepaid calling cards.

SBC agrees with AT&T in one respect — reform of outdated intercarrier compensation and universal service mechanisms is urgently needed.¹⁶ As technology evolves, more and more services are being provided over alternative networks, such as wireless networks and the Internet, rather than the PSTN. This is resulting in the rapid erosion of switched access charges as end users leave the PSTN. Given the enormous stress that legitimate competition and substitution are creating on the existing access charges and universal service regime, the Commission must be especially vigilant of illegitimate attempts to avoid access charges during this difficult transition period.

¹⁴ Petition at 2.

¹⁵ *See id.* at 3.

For these reasons, the Commission should reject the Petition and confirm that every call that originates and terminates on the PSTN is subject to access charges on both ends of the call, regardless of whether the call is routed through the Internet or third parties. SBC also urges the Commission to take this opportunity to send a clear message that it will not tolerate evasion of lawfully imposed access charges, whether by engaging in deceptive activities or by crafting baseless legal arguments.

Respectfully Submitted,

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¹⁶ *Id.* at 4.